
Introduced by Senator Ackerman

February 21, 2001

An act to amend Section 25102 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as introduced, Ackerman. Securities.

Existing law, the Corporate Securities Law of 1968, provides that it is unlawful for a person to offer or sell in this state any security in an issuer transaction unless the sale has been qualified or the security or transaction is exempted or not subject to qualification.

This bill would provide, with respect to certain offers and sales of security transactions that are exempted, that a purchaser that is an "accredited investor," as defined, is excluded from certain requirements. The bill would provide that the failure of a corporation or limited liability company to file a notice of transaction does not limit the availability of a specified exemption if the notice is filed within 15 business days after a demand by the Commissioner of Corporations.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25102 of the Corporations Code is
- 2 amended to read:
- 3 25102. The following transactions are exempted from the
- 4 provisions of Section 25110:
- 5 (a) Any offer (but not a sale) not involving any public offering
- 6 and the execution and delivery of any agreement for the sale of

1 securities pursuant to the offer if (1) the agreement contains
2 substantially the following provision: “The sale of the securities
3 that are the subject of this agreement has not been qualified with
4 the Commissioner of Corporations of the State of California and
5 the issuance of the securities or the payment or receipt of any part
6 of the consideration therefor prior to the qualification is unlawful,
7 unless the sale of securities is exempt from the qualification by
8 Section 25100, 25102, or 25105 of the California Corporations
9 Code. The rights of all parties to this agreement are expressly
10 conditioned upon the qualification being obtained, unless the sale
11 is so exempt”; and (2) no part of the purchase price is paid or
12 received and none of the securities are issued until the sale of the
13 securities is qualified under this law unless the sale of securities is
14 exempt from the qualification by this section, Section 25100, or
15 25105.

16 (b) Any offer (but not a sale) of a security for which a
17 registration statement has been filed under the Securities Act of
18 1933 but has not yet become effective, or for which an offering
19 statement under Regulation A has been filed but has not yet been
20 qualified, if no stop order or refusal order is in effect and no public
21 proceeding or examination looking toward such an order is
22 pending under Section 8 of the act and no order under Section
23 25140 or subdivision (a) of Section 25143 is in effect under this
24 law.

25 (c) Any offer (but not a sale) and the execution and delivery of
26 any agreement for the sale of securities pursuant to the offer as may
27 be permitted by the commissioner upon application. Any
28 negotiating permit under this subdivision shall be conditioned to
29 the effect that none of the securities may be issued and none of the
30 consideration therefor may be received or accepted until the sale
31 of the securities is qualified under this law.

32 (d) Any transaction or agreement between the issuer and an
33 underwriter or among underwriters if the sale of the securities is
34 qualified, or exempt from qualification, at the time of distribution
35 thereof in this state, if any.

36 (e) Any offer or sale of any evidence of indebtedness, whether
37 secured or unsecured, and any guarantee thereof, in a transaction
38 not involving any public offering.



(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:

(1) Sales of the security are not made to more than 35 persons, including persons not in this state.

(2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement. The number of purchasers referred to above is exclusive of any described in subdivision (i), any officer, director, or affiliate of the issuer, or manager (as appointed or elected by the members) if the issuer is a limited liability company, and any other purchaser who the commissioner designates by rule. For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person. *A purchaser who comes within any of the categories of an "accredited investor" as defined in Rule 501 (a) of Regulation D adopted by the Securities and Exchange Commission under the Securities Act of 1933, as amended, or who the issuer reasonably believes comes within that definition, at the time of the sale of the securities to that person, shall be excluded from the count of purchasers for purposes of paragraph (1) and from the requirements of paragraph (2).* The commissioner may by rule require the issuer to file a notice of

1 transactions under this subdivision. However, the failure to file the
2 notice or the failure to file the notice within the time specified by
3 the rule of the commissioner shall not affect the availability of this
4 exemption. An issuer who fails to file the notice as provided by
5 rule of the commissioner shall, within 15 business days after
6 demand by the commissioner, file the notice and pay to the
7 commissioner a fee equal to the fee payable had the transaction
8 been qualified under Section 25110.

9 (g) Any offer or sale of conditional sale agreements, equipment
10 trust certificates, or certificates of interest or participation therein
11 or partial assignments thereof, covering the purchase of railroad
12 rolling stock or equipment or the purchase of motor vehicles,
13 aircraft, or parts thereof, in a transaction not involving any public
14 offering.

15 (h) Any offer or sale of voting common stock by a corporation
16 incorporated in any state if, immediately after the proposed sale
17 and issuance, there will be only one class of stock of the
18 corporation outstanding that is owned beneficially by no more
19 than 35 persons, provided all of the following requirements have
20 been met:

21 (1) The offer and sale of the stock is not accompanied by the
22 publication of any advertisement, and no selling expenses have
23 been given, paid, or incurred in connection therewith.

24 (2) The consideration to be received by the issuer for the stock
25 to be issued consists of any of the following:

26 (A) Only assets (which may include cash) of an existing
27 business enterprise transferred to the issuer upon its initial
28 organization, of which all of the persons who are to receive the
29 stock to be issued pursuant to this exemption were owners during,
30 and the enterprise was operated for, a period of not less than one
31 year immediately preceding the proposed issuance, and the
32 ownership of the enterprise immediately prior to the proposed
33 issuance was in the same proportions as the shares of stock are to
34 be issued.

35 (B) Only cash or cancellation of indebtedness for money
36 borrowed, or both, upon the initial organization of the issuer,
37 provided all of the stock is issued for the same price per share.

38 (C) Only cash, provided the sale is approved in writing by each
39 of the existing shareholders and the purchaser or purchasers are
40 existing shareholders.

1 (D) In a case where after the proposed issuance there will be
2 only one owner of the stock of the issuer, only any legal
3 consideration.

4 (3) No promotional consideration has been given, paid, or
5 incurred in connection with the issuance. Promotional
6 consideration means any consideration paid directly or indirectly
7 to a person who, acting alone or in conjunction with one or more
8 other persons, takes the initiative in founding and organizing the
9 business or enterprise of an issuer for services rendered in
10 connection with the founding or organizing.

11 (4) A notice in a form prescribed by rule of the commissioner,
12 signed by an active member of the State Bar of California, is filed
13 with or mailed for filing to the commissioner not later than 10
14 business days after receipt of consideration for the securities by the
15 issuer. That notice shall contain an opinion of the member of the
16 State Bar of California that the exemption provided by this
17 subdivision is available for the offer and sale of the securities.
18 However, the failure to file the notice as required by this
19 subdivision and the rules of the commissioner shall not affect the
20 availability of this exemption. An issuer who fails to file the notice
21 within the time specified by this subdivision shall, within 15
22 business days after demand by the commissioner, file the notice
23 and pay to the commissioner a fee equal to the fee payable had the
24 transaction been qualified under Section 25110. The notice, except
25 when filed on behalf of a California corporation, shall be
26 accompanied by an irrevocable consent, in the form that the
27 commissioner by rule prescribes, appointing the commissioner or
28 his or her successor in office to be the issuer's attorney to receive
29 service of any lawful process in any noncriminal suit, action, or
30 proceeding against it or its successor that arises under this law or
31 any rule or order hereunder after the consent has been filed, with
32 the same force and validity as if served personally on the issuer. An
33 issuer on whose behalf a consent has been filed in connection with
34 a previous qualification or exemption from qualification under
35 this law (or application for a permit under any prior law if the
36 application or notice under this law states that the consent is still
37 effective) need not file another. Service may be made by leaving
38 a copy of the process in the office of the commissioner, but it is not
39 effective unless (A) the plaintiff, who may be the commissioner in
40 a suit, action, or proceeding instituted by him or her, forthwith

1 sends notice of the service and a copy of the process by registered
2 or certified mail to the defendant or respondent at its last address
3 on file with the commissioner, and (B) the plaintiff's affidavit of
4 compliance with this section is filed in the case on or before the
5 return day of the process, if any, or within the further time as the
6 court allows.

7 (5) Each purchaser represents that the purchaser is purchasing
8 for the purchaser's own account, or a trust account if the purchaser
9 is a trustee, and not with a view to or for sale in connection with
10 any distribution of the stock.

11 For the purposes of this subdivision, all securities held by a
12 husband and wife, whether or not jointly, shall be considered to be
13 owned by one person, and all securities held by a corporation that
14 has issued stock pursuant to this exemption shall be considered to
15 be held by the shareholders to whom it has issued the stock.

16 All stock issued by a corporation pursuant to this subdivision as
17 it existed prior to the effective date of the amendments to this
18 section made during the 1996 portion of the 1995–96 Regular
19 Session that required the issuer to have stamped or printed
20 prominently on the face of the stock certificate a legend in a form
21 prescribed by rule of the commissioner restricting transfer of the
22 stock in a manner provided for by that rule shall not be subject to
23 the transfer restriction legend requirement and, by operation of
24 law, the corporation is authorized to remove that transfer
25 restriction legend from the certificates of those shares of stock
26 issued by the corporation pursuant to this subdivision as it existed
27 prior to the effective date of the amendments to this section made
28 during the 1996 portion of the 1995–96 Regular Session.

29 (i) Any offer or sale (1) to a bank, savings and loan association,
30 trust company, insurance company, investment company
31 registered under the Investment Company Act of 1940, pension or
32 profit-sharing trust (other than a pension or profit-sharing trust of
33 the issuer, a self-employed individual retirement plan, or
34 individual retirement account), or other institutional investor or
35 governmental agency or instrumentality that the commissioner
36 may designate by rule, whether the purchaser is acting for itself or
37 as trustee, or (2) to any corporation with outstanding securities
38 registered under Section 12 of the Securities Exchange Act of 1934
39 or any wholly owned subsidiary of the corporation that after the
40 offer and sale will own directly or indirectly 100 percent of the



1 outstanding capital stock of the issuer, provided the purchaser
2 represents that it is purchasing for its own account (or for the trust
3 account) for investment and not with a view to or for sale in
4 connection with any distribution of the security.

5 (j) Any offer or sale of any certificate of interest or
6 participation in an oil or gas title or lease (including subsurface gas
7 storage and payments out of production) if either of the following
8 apply:

9 (1) All of the purchasers meet one of the following
10 requirements:

11 (A) Are and have been during the preceding two years engaged
12 primarily in the business of drilling for, producing, or refining oil
13 or gas (or whose corporate predecessor, in the case of a
14 corporation, has been so engaged).

15 (B) Are persons described in clause (1) of subdivision (i).

16 (C) Have been found by the commissioner upon written
17 application to be substantially engaged in the business of drilling
18 for, producing, or refining oil or gas so as not to require the
19 protection provided by this law (which finding shall be effective
20 until rescinded).

21 (2) The security is concurrently hypothecated to a bank in the
22 ordinary course of business to secure a loan made by the bank,
23 provided that each purchaser represents that it is purchasing for its
24 own account for investment and not with a view to or for sale in
25 connection with any distribution of the security.

26 (k) Any offer or sale of any security under, or pursuant to, a plan
27 of reorganization under Chapter 11 of the federal bankruptcy law
28 that has been confirmed or is subject to confirmation by the decree
29 or order of a court of competent jurisdiction.

30 (l) Any offer or sale of an option, warrant, put, call, or straddle,
31 and any guarantee of any of these securities, by a person who is not
32 the issuer of the security subject to the right, if the transaction, had
33 it involved an offer or sale of the security subject to the right by the
34 person, would not have violated Section 25110 or 25130.

35 (m) Any offer or sale of a stock to a pension, profit-sharing,
36 stock bonus, or employee stock ownership plan, provided that (1)
37 the plan meets the requirements for qualification under Section
38 401 of the Internal Revenue Code, and (2) the employees are not
39 required or permitted individually to make any contributions to the
40 plan. The exemption provided by this subdivision shall not be

1 affected by whether the stock is contributed to the plan, purchased
2 from the issuer with contributions by the issuer or an affiliate of
3 the issuer, or purchased from the issuer with funds borrowed from
4 the issuer, an affiliate of the issuer, or any other lender.

5 (n) Any offer or sale of any security in a transaction, other than
6 an offer or sale of a security in a rollup transaction, that meets all
7 of the following criteria:

8 (1) The issuer is (A) a California corporation or foreign
9 corporation that, at the time of the filing of the notice required
10 under this subdivision, is subject to Section 2115, or (B) any other
11 form of business entity, including without limitation a partnership
12 or trust organized under the laws of this state. The exemption
13 provided by this subdivision is not available to a “blind pool”
14 issuer, as that term is defined by the commissioner, or to an
15 investment company subject to the Investment Company Act of
16 1940.

17 (2) Sales of securities are made only to qualified purchasers or
18 other persons the issuer reasonably believes, after reasonable
19 inquiry, to be qualified purchasers. A corporation, partnership, or
20 other organization specifically formed for the purpose of acquiring
21 the securities offered by the issuer in reliance upon this exemption
22 may be a qualified purchaser if each of the equity owners of the
23 corporation, partnership, or other organization is a qualified
24 purchaser. Qualified purchasers include the following:

25 (A) A person designated in Section 260.102.13 of Title 10 of
26 the California Code of Regulations.

27 (B) A person designated in subdivision (i) or any rule of the
28 commissioner adopted thereunder.

29 (C) A pension or profit-sharing trust of the issuer, a
30 self-employed individual retirement plan, or an individual
31 retirement account, if the investment decisions made on behalf of
32 the trust, plan, or account are made solely by persons who are
33 qualified purchasers.

34 (D) An organization described in Section 501(c)(3) of the
35 Internal Revenue Code, corporation, Massachusetts or similar
36 business trust, or partnership, each with total assets in excess of
37 five million dollars (\$5,000,000) according to its most recent
38 audited financial statements.

39 (E) With respect to the offer and sale of one class of voting
40 common stock of an issuer or of preferred stock of an issuer

1 entitling the holder thereof to at least the same voting rights as the
2 issuer's one class of voting common stock, provided that the issuer
3 has only one-class voting common stock outstanding upon
4 consummation of the offer and sale, a natural person who, either
5 individually or jointly with the person's spouse, (i) has a minimum
6 net worth of two hundred fifty thousand dollars (\$250,000) and
7 had, during the immediately preceding tax year, gross income in
8 excess of one hundred thousand dollars (\$100,000) and reasonably
9 expects gross income in excess of one hundred thousand dollars
10 (\$100,000) during the current tax year or (ii) has a minimum net
11 worth of five hundred thousand dollars (\$500,000). "Net worth"
12 shall be determined exclusive of home, home furnishings, and
13 automobiles. Other assets included in the computation of net worth
14 may be valued at fair market value.

15 Each natural person specified above, by reason of his or her
16 business or financial experience, or the business or financial
17 experience of his or her professional adviser, who is unaffiliated
18 with and who is not compensated, directly or indirectly, by the
19 issuer or any affiliate or selling agent of the issuer, can be
20 reasonably assumed to have the capacity to protect his or her
21 interests in connection with the transaction. The amount of the
22 investment of each natural person shall not exceed 10 percent of
23 the net worth, as determined by this subparagraph, of that natural
24 person.

25 (F) Any other purchaser designated as qualified by rule of the
26 commissioner.

27 (3) Each purchaser represents that the purchaser is purchasing
28 for the purchaser's own account (or trust account, if the purchaser
29 is a trustee) and not with a view to or for sale in connection with
30 a distribution of the security.

31 (4) Each natural person purchaser, including a corporation,
32 partnership, or other organization specifically formed by natural
33 persons for the purpose of acquiring the securities offered by the
34 issuer, receives, at least five business days before securities are
35 sold to, or a commitment to purchase is accepted from, the
36 purchaser, a written offering disclosure statement that shall meet
37 the disclosure requirements of Regulation D (17 C.F.R. 230.501
38 et seq.), and any other information as may be prescribed by rule of
39 the commissioner, provided that the issuer shall not be obligated
40 pursuant to this paragraph to provide this disclosure statement to

1 a natural person qualified under Section 260.102.13 of Title 10 of
2 the California Code of Regulations. The offer or sale of securities
3 pursuant to a disclosure statement required by this paragraph that
4 is in violation of Section 25401, or that fails to meet the disclosure
5 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not
6 render unavailable to the issuer the claim of an exemption from
7 Section 25110 afforded by this subdivision. This paragraph does
8 not impose, directly or indirectly, any additional disclosure
9 obligation with respect to any other exemption from qualification
10 available under any other provision of this section.

11 (5) (A) A general announcement of proposed offering may be
12 published by written document only, provided that the general
13 announcement of proposed offering sets forth the following
14 required information:

15 (i) The name of the issuer of the securities.

16 (ii) The full title of the security to be issued.

17 (iii) The anticipated suitability standards for prospective
18 purchasers.

19 (iv) A statement that (I) no money or other consideration is
20 being solicited or will be accepted, (II) an indication of interest
21 made by a prospective purchaser involves no obligation or
22 commitment of any kind, and, if the issuer is required by paragraph
23 (4) to deliver a disclosure statement to prospective purchasers,
24 (III) no sales will be made or commitment to purchase accepted
25 until five business days after delivery of a disclosure statement and
26 subscription information to the prospective purchaser in
27 accordance with the requirements of this subdivision.

28 (v) Any other information required by rule of the
29 commissioner.

30 (vi) The following legend: "For more complete information
31 about (Name of Issuer) and (Full Title of Security), send for
32 additional information from (Name and Address) by sending this
33 coupon or calling (Telephone Number)."

34 (B) The general announcement of proposed offering referred to
35 in subparagraph (A) may also set forth the following information:

36 (i) A brief description of the business of the issuer.

37 (ii) The geographic location of the issuer and its business.

38 (iii) The price of the security to be issued, or, if the price is not
39 known, the method of its determination or the probable price range
40 as specified by the issuer, and the aggregate offering price.



(C) The general announcement of proposed offering shall contain only the information that is set forth in this paragraph.

(D) Dissemination of the general announcement of proposed offering to persons who are not qualified purchasers, without more, shall not disqualify the issuer from claiming the exemption under this subdivision.

(6) No telephone solicitation shall be permitted until the issuer has determined that the prospective purchaser to be solicited is a qualified purchaser.

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars (\$1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued by a corporation or limited liability company pursuant to a purchase plan or agreement, or issued pursuant to an option plan or agreement, where the security at the time of issuance or grant is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by

1 reference into this section, provided that (1) the terms of any
2 purchase plan or agreement shall comply with Sections
3 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the
4 California Code of Regulations, (2) the terms of any option plan
5 or agreement shall comply with Sections 260.140.41, 260.140.45,
6 and 260.140.46 of Title 10 of the California Code of Regulations,
7 and (3) the issuer files a notice of transaction in accordance with
8 rules adopted by the commissioner no later than 30 days after the
9 initial issuance of any security under that plan, accompanied by a
10 filing fee as prescribed by subdivision (y) of Section 25608.
11 *However, the failure to file the notice of transaction or the failure*
12 *to file that notice within the times specified in this subdivision shall*
13 *not affect the availability of this exemption. An issuer that fails to*
14 *file the notice shall, within 15 business days after demand by the*
15 *commissioner, file the notice and pay the commissioner a fee equal*
16 *to the maximum aggregate fee payable had the transaction been*
17 *qualified under Section 25110.*

18 Offers and sales exempt pursuant to this subdivision shall be
19 deemed to be part of a single, discrete offering and are not subject
20 to integration with any other offering or sale, whether qualified
21 under Chapter 2 (commencing with Section 25110), or otherwise
22 exempt, or not subject to qualification.

23 (p) An offer or sale of nonredeemable securities to accredited
24 investors (Section 28031) by a person licensed under the Capital
25 Access Company Law (Division 3 (commencing with Section
26 28000) of Title 4). All nonredeemable securities shall be
27 evidenced by certificates that shall have stamped or printed
28 prominently on their face a legend in a form to be prescribed by
29 rule or order of the commissioner restricting transfer of the
30 securities in the manner as the rule or order provides.

31 (q) Any offer or sale of any viatical or life settlement contract
32 or fractionalized or pooled interest therein in a transaction that
33 meets all of the following criteria:

34 (1) Sales of securities described in this subdivision are made
35 only to qualified purchasers or other persons the issuer reasonably
36 believes, after reasonable inquiry, to be qualified purchasers. A
37 corporation, partnership, or other organization specifically formed
38 for the purpose of acquiring the securities offered by the issuer in
39 reliance upon this exemption may be a qualified purchaser only if
40 each of the equity owners of the corporation, partnership, or other

1 organization is a qualified purchaser. Qualified purchasers include
2 the following:

3 (A) A person designated in Section 260.102.13 of Title 10 of
4 the California Code of Regulations.

5 (B) A person designated in subdivision (i) or any rule of the
6 commissioner adopted thereunder.

7 (C) A pension or profit-sharing trust of the issuer, a
8 self-employed individual retirement plan, or an individual
9 retirement account, if the investment decisions made on behalf of
10 the trust, plan, or account are made solely by persons who are
11 qualified purchasers.

12 (D) An organization described in Section 501(c)(3) of the
13 Internal Revenue Code, corporation, Massachusetts or similar
14 business trust, or partnership, each with total assets in excess of
15 five million dollars (\$5,000,000) according to its most recent
16 audited financial statements.

17 (E) A natural person who, either individually or jointly with the
18 person's spouse, (i) has a minimum net worth of one hundred fifty
19 thousand dollars (\$150,000) and had, during the immediately
20 preceding tax year, gross income in excess of one hundred
21 thousand dollars (\$100,000) and reasonably expects gross income
22 in excess of one hundred thousand dollars (\$100,000) during the
23 current tax year or (ii) has a minimum net worth of two hundred
24 fifty thousand dollars (\$250,000). "Net worth" shall be
25 determined exclusive of home, home furnishings, and
26 automobiles. Other assets included in the computation of net worth
27 may be valued at fair market value.

28 Each natural person specified above, by reason of his or her
29 business or financial experience, or the business or financial
30 experience of his or her professional advisor, who is unaffiliated
31 with and who is not compensated, directly or indirectly, by the
32 issuer or any affiliate or selling agent of the issuer, can be
33 reasonably assumed to have the capacity to protect his or her
34 interests in connection with the transaction.

35 The amount of the investment of each natural person shall not
36 exceed 10 percent of the net worth, as determined by this
37 subdivision, of that natural person.

38 (F) Any other purchaser designated as qualified by rule of the
39 commissioner.

1 (2) Each purchaser represents that the purchaser is purchasing
2 for the purchaser's own account (or trust account, if the purchaser
3 is a trustee) and not with a view to or for sale in connection with
4 a distribution of the security.

5 (3) Each natural person purchaser, including a corporation,
6 partnership, or other organization specifically formed by natural
7 persons for the purpose of acquiring the securities offered by the
8 issuer, receives, at least five business days before securities
9 described in this subdivision are sold to, or a commitment to
10 purchase is accepted from, the purchaser, the following
11 information in writing:

12 (A) The name, principal business and mailing address, and
13 telephone number of the issuer.

14 (B) The suitability standards for prospective purchasers as set
15 forth in paragraph (1) of this subdivision.

16 (C) A description of the issuer's type of business organization
17 and the state in which the issuer is organized or incorporated.

18 (D) A brief description of the business of the issuer.

19 (E) If the issuer retains ownership or becomes the beneficiary
20 of the insurance policy, an audit report of an independent certified
21 public accountant together with a balance sheet and related
22 statements of income, retained earnings, and cash-flows that
23 reflect the issuer's financial position, the results of the issuer's
24 operations, and the issuer's cash-flows as of a date within 15
25 months before the date of the initial issuance of the securities
26 described in this subdivision. The financial statements listed in this
27 subparagraph shall be prepared in conformity with generally
28 accepted accounting principles. If the date of the audit report is
29 more than 120 days before the date of the initial issuance of the
30 securities described in this subdivision, the issuer shall provide
31 unaudited interim financial statements.

32 (F) The names of all directors, officers, partners, members, or
33 trustees of the issuer.

34 (G) A description of any order, judgment, or decree that is final
35 as to the issuing entity of any state, federal, or foreign country
36 governmental agency or administrator, or of any state, federal or
37 foreign country court of competent jurisdiction (i) revoking,
38 suspending, denying, or censuring for cause any license, permit,
39 or other authority of the issuer or of any director, officer, partner,
40 member, trustee, or person owning or controlling, directly or

1 indirectly, 10 percent or more of the outstanding interest or equity
 2 securities of the issuer, to engage in the securities, commodities,
 3 franchise, insurance, real estate, or lending business or in the offer
 4 or sale of securities, commodities, franchises, insurance, real
 5 estate, or loans, (ii) permanently restraining, enjoining, barring,
 6 suspending, or censuring any such person from engaging in or
 7 continuing any conduct, practice, or employment in connection
 8 with the offer or sale of securities, commodities, franchises,
 9 insurance, real estate, or loans, (iii) convicting any such person of,
 10 or pleading nolo contendere by any such person to, any felony or
 11 misdemeanor involving a security, commodity, franchise,
 12 insurance, real estate, or loan, or any aspect of the securities,
 13 commodities, franchise, insurance, real estate, or lending
 14 business, or involving dishonesty, fraud, deceit, embezzlement,
 15 fraudulent conversion, or misappropriation of property, or (iv)
 16 holding any such person liable in a civil action involving breach
 17 of a fiduciary duty, fraud, deceit, embezzlement, fraudulent
 18 conversion, or misappropriation of property. This subparagraph
 19 does not apply to any order, judgment, or decree that has been
 20 vacated, overturned, or is more than 10 years old.

21 (H) Notice of the purchaser's right to rescind or cancel the
 22 investment and receive a refund pursuant to Section 25508.5.

23 (I) The name, address, and telephone number of the issuing
 24 insurance company, and the name, address, and telephone number
 25 of the state or foreign country regulator of the insurance company.

26 (J) The total face value of the insurance policy and the
 27 percentage of the insurance policy the purchaser will own.

28 (K) The insurance policy number, issue date, and type.

29 (L) If a group insurance policy, the name, address, and
 30 telephone number of the group, and, if applicable, the material
 31 terms and conditions of converting the policy to an individual
 32 policy, including the amount of increased premiums.

33 (M) If a term insurance policy, the term and the name, address,
 34 and telephone number of the person who will be responsible for
 35 renewing the policy if necessary.

36 (N) That the insurance policy is beyond the state statute for
 37 contestability and the reason therefor.

38 (O) The insurance policy premiums and terms of premium
 39 payments.

1 (P) The amount of the purchaser's moneys that will be set aside
2 to pay premiums.

3 (Q) The name, address, and telephone number of the person
4 who will be the insurance policy owner and the person who will
5 be responsible for paying premiums.

6 (R) The date on which the purchaser will be required to pay
7 premiums and the amount of the premium, if known.

8 (S) A statement to the effect that any projected rate of return to
9 the purchaser from the purchase of a viatical or life settlement
10 contract or a fractionalized or pooled interest therein is based on
11 an estimated life expectancy for the person insured under the life
12 insurance policy; that the return on the purchase may vary
13 substantially from the expected rate of return based upon the actual
14 life expectancy of the insured that may be less than, equal to, or
15 may greatly exceed the estimated life expectancy; and that the rate
16 of return would be higher if the actual life expectancy were less
17 than, and lower if the actual life expectancy were greater than the
18 estimated life expectancy of the insured at the time the viatical or
19 life settlement contract was closed.

20 (T) A statement that the purchaser should consult with his or
21 her tax advisor regarding the tax consequences of the purchase of
22 the viatical or life settlement contract or fractionalized or pooled
23 interest therein and, if the purchaser is using retirement funds or
24 accounts for that purchase, whether or not any adverse tax
25 consequences might result from the use of those funds for the
26 purchase of that investment.

27 (U) Any other information as may be prescribed by rule of the
28 commissioner.

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